

JAN 30 1987

IN THE

JOSEPH F. CRANIO, JR.
CLERK**Supreme Court of the United States**

OCTOBER TERM, 1986

TOWNSHIP OF PISCATAWAY, TOWNSHIP OF WOODBRIDGE,
BOROUGH OF NORTH ARLINGTON, BOROUGH OF PARA-
MUS, and BOROUGH OF WOODCLIFF LAKE,

Petitioners,

—v.—

NEW JERSEY CITIZEN ACTION, LEAGUE OF CONSERVATION
VOTERS, PARAMUS CITIZENS FOR A NUCLEAR WEAPONS
FREEZE, PENNSYLVANIA PUBLIC INTEREST COALITION,
REPUBLICAN CITY COMMITTEE OF PHILADELPHIA,
AMERICANS FOR DEMOCRATIC ACTION OF SOUTHEAST-
ERN PA., and FRIENDS OF BOB EDGAR,

Respondents.

**BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF
CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT**

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Whether the Court of Appeals correctly held that ordinances prohibiting door-to-door canvassing by non-profit political advocacy organizations during the evening hours prior to 9 p.m. violate the First Amendment, based on the trial court's specific findings that the organizations did not have ample alternative channels of communication and that the restrictions did not significantly further alleged state interests in crime prevention and/or privacy.

2. Whether the Court of Appeals correctly held that the First Amendment precludes routine municipal fingerprinting of advocacy canvassers, based on the trial court's findings that fingerprinting substantially restricted advocacy organizations' ability to communicate with the public and that there was no particularized showing of a relationship between fingerprinting and the asserted state interest of crime prevention.

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STATEMENT OF THE CASE

The facts, based on 5 days of evidentiary hearings, are extensively set forth in the trial court's Findings of Fact. 121a-158a.

Respondents take exception to two statements in Petitioners' Statement of the Case. On page 6, Petitioners assert that respondent organizations derive revenues "through the door-to-door sale of magazine subscriptions, literature and related documentary materials." There is no evidence of such marketing. The District Court, in Fact Finding 5, found that both New Jersey Citizen Action (NJCA) and League of Conservation Voters (LCV) canvassers solicit donations as well as other forms of political support from citizens at their residential doorways. To persons who contribute more than \$15, NJCA then sends a regular newsletter; and LCV sends its annual voting chart to persons who become members by contributing \$18 or more. 125a-126a.

Nor does the record support Petitioners' assertion, on page 7, that "Respondents view the criminal background of a prospective solicitor as irrelevant to his or her utility as a salesperson or a fund-raiser." As should be self-evident, and as the District Court found based on the evidence, the respondent organizations hire and train canvassers who will "seek to win friends for the organization and its viewpoints." 137a. "The substantial factors utilized in the hiring process are the communication ability of the prospective canvassers and the ability to articulate the issues and convince people to involve themselves in plaintiffs' work." 139a. It would be clearly incompatible with those goals to utilize criminal types to carry the organizations' messages. What the District Court did find was that these poorly-funded grass-roots organizations, 173a, lacked the

resources to conduct follow-up investigations of representations made by prospective employees, and thus relied heavily upon monitored performance during a training period. 136a-139a.

ARGUMENT

This Petition involves the same issue as
City of Watseka v. Illinois Public Action
Council, No. 86-631, U.S. , 55 U.S.L.W
3489 (affirmed, Jan. 20, 1987). The reasons
for affirmance therein require denial of
Certiorari here.

Furthermore, the court below did not rely
upon a "least restrictive means" analysis,
the point that troubled the three dissenters
in Watseka. See New Jersey Citizen Action v.
Edison Twp, 797 F.2d 1250, 1255 (contrasting
the constitutional standard employed in the
Third Circuit with that followed by the
Seventh Circuit in Watseka). Rather, the
Third Circuit found that the respondent non-
profit advocacy organizations did not have
any ample alternative channels of communica-
tion and that, indeed, they would be forced

to restrict their operations dramatically or cease operations entirely if denied access to municipal residents between the hours of 5 and 9 p.m. 797 F.2d at 1261.

In addition to the hours issue, the instant matter involves a ruling that municipal fingerprinting requirements for non-profit advocacy canvassers also violated the First Amendment. As was its hours ruling, the Court of Appeals' action in regard to fingerprinting was grounded upon well-established constitutional principles governing time, place and manner regulation of expressional activity and upon particularized findings that such fingerprinting unduly restricted respondent organizations' First Amendment rights.

The Court of Appeals reviewed the trial court's extensive Findings detailing the severe burden which fingerprinting imposed on

respondents' exercise of First Amendment rights -- including the fact that intervenor Paramus Freeze was totally precluded from canvassing in the Borough of Paramus because its volunteers would not submit to the stigmatization of fingerprinting. 797 F.2d at 1265; 148a-149a. In light of that burden, the Court of Appeals properly concluded that the municipalities were required to demonstrate more than a "reasonable relationship" between the regulation and the asserted state interest in crime prevention. "The burden placed on First Amendment activities by these ordinances required that they withstand more exacting scrutiny." 797 F. 2d at 1265. The trial court's findings made it abundantly clear that the municipalities could not demonstrate a causal relationship between the fingerprinting of advocacy canvassers and crime prevention. 151a-152a. Based

on that factual record, the Court of Appeals held:

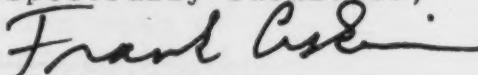
[T]he burden on First Amendment activity caused by the fingerprinting requirements is simply too heavy to pass constitutional muster in light of the absence of a particularized showing of the needed relationship between the fingerprinting and the asserted state interests.

797 F.2d at 1265

CONCLUSION

For the foregoing reasons, the Petition for Certiorari should be denied.

Respectfully submitted,



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